

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 939 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JYOTIBEN NATVARLAL BHATT

Versus

STATE OF GUJARAT

Appearance:

MS MEGHA JANI for Petitioners
NOTICE SERVED BY DS for Respondent No. 1
TANNA ASSOCIATES for Respondent No. 2
MR CH VORA for Respondent No. 3
MR DA BAMBHANIA for Respondent No. 5

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 02/05/98

ORAL JUDGEMENT

The question arises for consideration is whether the Government Servant can dispose of the amount of family pension by way of will ? The petitioners who are wife and minor daughter of deceased Bipinbhai Joshi, who died on 22.8.1991, have filed this petition for an

appropriate writ, order or directions, directing the respondent no. 2-District Development Officer to pay the amount of family pension as family of late Bipinbhai Joshi to the petitioners and to pay the arrears of family pension to the petitioner no. 1. There is no dispute to the fact that the deceased Bipinbhai Joshi executed a Will dated 14.7.1991, whereby the amount of provident fund, gratuity, amount of group insurance and the amount of family pension bequeathed on the respondents no. 3 and 4, his parents.

Miss Megha Jani, learned advocate for the petitioners after inviting my attention to the definition of 'Family' Clause-3 of the Resolution No. FPS-1071-J, dated 1.1.1972 issued by the Financial Department, Government of Gujarat, has contended that the petitioners being the wife and the minor daughter are the members of the family and, therefore, they are entitled to the family pension and, in any case, respondents no. 3 and 4, who does not fall within the category of family cannot claim the family pension on the basis of the Will executed by the deceased in their favour. It was further submitted that the deceased cannot bequeathed by Will the family pension as it does not form part of his estate. In my view, the submissions advanced on behalf of the petitioners, are required to be accepted. Clause-3 of the resolution referred above which is necessary for our purpose reads as under:

" 'Family' for purposes of this scheme will include the following relatives of the Government Servants:-

(a) wife, in the case of a male Government Servant.

(b) Husband, in the case of a female Government Servant;

(c) Minor sons; and

(d) Unmarried or minor daughters.

Note 1: (c) & (d) will include children adopted legally before retirement/death.

Note 2: Marriage after retirement will not be recognised for purposes of this Scheme."

As per the said definition, the petitioners who are the wife as well as minor daughter of the deceased

are included as the members of the family and, therefore, they are the persons entitled to claim family pension.

The Supreme Court, in the case of Smt Violet Issac & Others vs. Union of India & Ors., (1991)SCC p. 725, has laid down that "the Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The employee has no title nor any control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition. Accordingly, in the present case, the widow of the deceased Railway employee is entitled to receive the family pension, notwithstanding the will alleged to have been executed by the deceased." In view of the ruling of the Supreme Court, which squarely applied to the facts of the present case. In my view, the husband of the petitioner no. 1 could not have bequeathed the family pension as the family pension does not form a part of his estate in favour of respondents no. 3 and 4 as the petitioners are the only persons who are legally entitled to receive the same.

Mr CH Vora, learned advocate for the respondents no. 3 and 4 has submitted that the respondents no. 3 and 4 have already obtained the Probate and, therefore, they are the beneficiaries under the Will executed by their son deceased Bipinbhai Joshi and, in any case, the since the petitioners have challenged the Probate by filing the appeal which is pending in this Court, the present petition under Article 226 of the Constitution is not maintainable. It is not possible for me to accept the said submission for the simple reason that in view of the law laid down by the Apex court wherein the position has been made clear that the deceased is not entitled to bequeathed his family pension by way of Will. It may be mentioned that in the case of Smt. Violet Issaac & Ors. (supra), the Supreme Court while holding that Mrs Violet Issaac the widow of the deceased Railway employee is entitled to receive the family pension, notwithstanding the will alleged to have been executed by the deceased in favour of his brother Elic Alfred. In view of this, the contention of Mr Vora deserves rejection. Mr Vora

finally submitted that this Court may grant stay of the operation of this order for a period of six weeks to enable the respondents no. 3 and 4 to challenge the same before the appellate forum. IN view of the law laid down by the Apex Court, I see no reason to stay the order, hence the request is rejected.

In the result, the petition is allowed. The respondent no. 2-District Development Officer is directed to pay the arrears of the Family Pension and continue to pay the same to the petitioner in accordance with law. Rule is made absolute with no order as to costs.
